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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 20, 2002

Mr. David Solomon
Chief, Enforcement Bureau
Federal Communications Commission
455 12th Street, S.W.
Washington, DC 20554

Re: Bell Atlantic Corp. and GTE Corp., CC Docket No. 98-184

Dear Mr. Solomon:

On May 29, 2002, Maureen Del Duca sent a letter to PricewaterhouseCoopers LLP, the firm performing the audit of Verizon's compliance with the merger conditions for the year ended December 31, 2001 period, advising them that the calculations prescribed in Condition V of the *Bell Atlantic/GTE Merger Order*¹ for measurements expressed as averages or means do not cap the difference between the "actual average" and the "calculated average." For the reasons described below, Verizon seeks your review of this interpretation. If, after considering Verizon's arguments, the Bureau continues to disagree with Verizon's interpretation of the merger condition, Verizon requests a formal ruling that would be reviewable under section 1.115 of the Commission's rules.

The relevant payments under Condition V are specified as amounts "per occurrence." *See Merger Order*, Attachments A-5a, A-5b. When calculating such payments for measurements expressed as means or averages, the merger conditions require Verizon to apply a three-step process. *See id.*, Attachment A-3-4. First, Verizon

¹ *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 14032, Appendix D, Condition V (2000) ("Merger Order").

must calculate the average CLEC performance when setting the “t” score equation equal to the critical value, i.e., the level at which Verizon could provide service without owing payments. Second, Verizon calculates the percentage difference between the actual average CLEC performance and the calculated critical value. For instance, if the actual average CLEC performance was nine days and the critical value was three days, the percentage difference would be 200 percent. Third, Verizon multiplies the total number of data points, or occurrences, by the percentage difference in step two and then multiplies this number by the per-occurrence payment amounts in the plan. Because the payment amounts are specified “per occurrence,” Verizon caps the percentage difference in step two to 100 percent so that the payment resulting for that measure does not exceed the total number of actual occurrences times the per-occurrence dollar value specified in Attachments A-5a and A5b of Condition V for that measure.

This performance plan was copied almost verbatim from the SBC merger order’s carrier-to-carrier performance plan, which in turn was modeled on the performance plan adopted by the Texas State commission.² Subsequent to the SBC merger, the Texas commission modified the state plan to explicitly include a 100 percent cap in step two. *See* Public Utility Commission of Texas, Project No. 20400, Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas, Order No. 13, Section III (July 2000). In a February 6, 2002 letter to SBC, Carol Matthey agreed that SBC should be permitted to follow the 100 percent cap for the federal performance plan as well.³ Although that letter relied upon considerations of administrative efficiency and comity in determining the interpretation and application of the SBC merger conditions, the Commission should follow the Texas commission’s approach for Verizon as well simply because the Texas commission got it right on the merits. It is unreasonable to interpret the payments listed as “per occurrence” in the merger conditions as requiring a greater number of per-occurrence payments than occurrences. Indeed, this does not happen for any of the other measurements, including those where the reported performance measurements are expressed as percentages, ratios, or proportions. *See Merger Order*, Attachment A-3-4 to A-3-5. When Verizon proposed the carrier-to-carrier performance plan to the Commission during the merger proceeding, it understood that the payments would not exceed the maximum per-occurrence amounts times the number of occurrences in a given month as set forth in A-5a and A-5b for all types of measurements. This is a logical interpretation and one that is consistent with the goal of the performance plan to provide an incentive for Verizon to meet the performance standards. *See Merger Order*, ¶ 279.

² *See Merger Order*, Attachment A-3, page A-3-4, “Measurements For Which The Reporting Dimensions Are Average Or Means” and Attachment 17, Performance Remedy Plan-Texas page 14, paragraph 11.1.2.1 “Measures Measurements For Which The Reporting Dimensions Are Average Or Means.”

³ *See* Letter from Carol Matthey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, to Caryn Moir, Vice President – Federal Regulatory, SBC Telecommunications, Inc., CC Docket No. 98-141, ASD File No. 99-49 (Feb. 6, 2002).

For these reasons, Verizon requests the same interpretation of this issue as the Bureau gave to SBC. Verizon requests that you issue a formal, reviewable decision on this issue.

If you have any questions, please do not hesitate to call me.

Sincerely,



Joseph DiBella

cc: Maureen Del Duca
Carol Matthey